

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:

FLAT IRON PARTNERS, LP)	
Map 25, Parcel 005.27)	Tipton
Commercial Property)	County
Tax Year 2005)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who determined the State Board lacked jurisdiction to hear the appeal because the taxpayer failed to first appeal to the Tipton County Board of Equalization. The appeal was heard in Jackson on September 21, 2006 before Commission members Stokes (presiding), Wade, and Jones.¹ Flat Iron Partners (Flat Iron) was represented by its counsel, Mr. W. Lewis Jenkins, Jr., and Mr. John C. E. Allen of the state Division of Property Assessments assisted the assessor along with Deputy Assessor Greg Stimpson.

Findings of fact and conclusions of law

The assessor's appraised value for the subject property did not change for tax year 2005, and consequently the assessor was not required to mail notice of the 2005 value. Instead the assessor published a newspaper notice advising taxpayers the county board of equalization would convene in June of 2005 to hear appeals, the last day of hearings being scheduled for June 8.² Sometime before filing the instant appeal to the State Board of Equalization on June 24, 2005, Flat Iron partner Richard Wilson visited the assessor to discuss the assessment but was not told about appealing to the county board of equalization. Before the administrative judge and again before the Commission, Mr. Wilson could not recall whether he spoke with the assessor before or after the June 8 county board deadline.

Flat Iron timely requested a hearing before the State Board of Equalization for a determination whether reasonable cause exists to excuse its failure to first appeal to the county board. Tenn. Code Ann. §67-5-1412 (e). Flat Iron argues: 1) the county board appeal would have been fruitless, since the county board rejected the company's claim for 2006; 2) Flat Iron has been denied constitutional due process in that such notice as

¹ Mr. Wade and Mr. Jones sat as designated alternates for absent members, pursuant to Tenn. Code Ann. §4-5-302.

² Tenn. Code Ann. §67-5-508.

was given was not reasonably calculated to apprise the company of its right to a hearing and it was fundamentally unfair not to have told Mr. Wilson of the need to appeal to the county board of equalization; and 3) the assessor's records contained the wrong address. The administrative judge addressed the first and last of these arguments, there is no dispute regarding the judge's factual findings, and we are persuaded his view was correct for the reasons noted in the initial decision and order.

In support of the due process argument Mr. Jenkins cites *Mullane v. Central Hanover Trust*, 339 U. S. 306 (1950), but Tennessee law commands no more than newspaper notice to taxpayers whose assessments have not changed since the prior year. If this notice was deficient to Flat Iron, it was deficient to the vast majority of Tipton County taxpayers whose assessment was unchanged. We are asked on the basis of this allegedly defective statutory notice procedure, to essentially to find the statute unconstitutional, and this we decline to do.

A much closer question is whether the assessor's failure to advise Mr. Wilson of the county board appeal, constitutes reasonable cause to excuse Flat Iron's failure to first appeal to the county board. On this point there is a failure of proof. Mr. Wilson could not recall whether his conversation with the assessor occurred before the county board deadline. If the assessor failed to direct Mr. Wilson to the county board while there was still time for Flat Iron to act, we may be inclined to a different view, but absent this proof we find no reasonable cause to excuse the lack of a county board appeal for tax year 2005. These are sophisticated owners who paid their 2004 taxes in person and who must be charged with knowledge of their assessment and of the consequences of failure to act.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion.

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

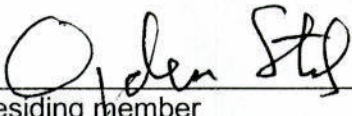
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within thirty (30) days from the date of this order.

3. Review by the Chancery Court of Tipton County or other venue as provided by law.

A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

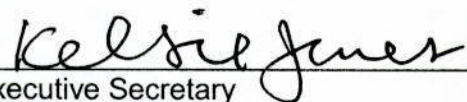
Requests for stay of effectiveness will not be accepted.

DATED: Oct. 17, 2006



Presiding member

ATTEST:



Executive Secretary

cc: Mr. W. Lewis Jenkins, Jr., Esq.
Mr. Greg Stimpson, Assessor's office
Mr. John C. E. Allen, Esq.